



Nebraska Judicial Qualifications Commission

Creation and Authority of the Commission on Judicial Qualifications

The Commission on Judicial Qualifications reviews complaints submitted by any citizen regarding the behavior of judges as it relates to the Code of Judicial Conduct, and has the authority to reprimand a judge after a closed hearing or to order an open hearing.

The Nebraska Constitution and state statutes specifically set out the grounds for which a judge may be punished, and the extent of the punishment. These statutes were recently amended clarifying that the Commission may not issue private reprimands and requiring the Commission to prepare an annual report. See L.B.754, signed Mar. 28, 2005, effective Sept. 4, 2005.

The Judicial Qualifications Commission may issue a public reprimand when the Commission finds it is warranted. It is the Supreme Court, after investigation by the Qualifications Commission, who may discipline, censure, suspend without pay (for a definite period of time not to exceed six months) or remove a judge from office. The Supreme Court can also, if it chooses, issue a public reprimand.

The grounds for discipline are:

- (1) willful misconduct in office,
- (2) willful disregard of or failure to perform judicial duties,
- (3) habitual intemperance,
- (4) conviction of a crime involving moral turpitude,
- (5) disbarment as a member of the legal profession licensed to practice law in the State of Nebraska, or

- (6) conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

The Commission is not authorized to review decisions made by a judge or to grant any form of relief arising out of a lawsuit, except to the extent that the action of the judge in the case constitutes a violation of one of the grounds for discipline.

Upon receiving a complaint, the Commission is authorized to conduct an investigation and, upon a finding of probable cause, may reprimand the judge or may order a hearing to be held before the Commission. After a hearing, the Commission must find that the charges are established by clear and convincing evidence. If it does so, it then recommends to the Supreme Court what action should be taken. The Supreme Court then reviews the record de novo and makes such determination as it finds just and proper.

All papers filed with and proceedings before the Commission, prior to any open hearing, are confidential and all testimony given before the Commission is deemed a 'privileged communication'.

In 1966, Nebraska voters adopted constitutional provisions providing for a Commission on Judicial Qualifications. In 1967 the Nebraska Legislature passed the enabling legislation providing for a Commission composed of 11 members, seven of whom were judges appointed by the Chief Justice of the Supreme Court,

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two attorneys appointed by the Nebraska State Bar Association, and two lay citizens appointed by the Governor. The Commission was limited to making recommendations to the Supreme Court for the removal or retirement of judges after conducting an investigation and hearing.

In 1980, the Constitution was amended. In 1981 LB 475 was enacted by the Legislature which changed the composition of the Commission and enhanced its

authority. The Commission now has 10 members consisting of the Chief Justice who serves as its permanent chairperson; three judges appointed by the Chief Justice; three attorneys, appointed by the Nebraska State Bar Association; and three lay citizens appointed by the Governor.

In 1984 the Constitution was further amended to restrict the authority of the Commission on Judicial Qualifications by eliminating its authority to issue reprimands without due process hearings and public notice of the reprimand.

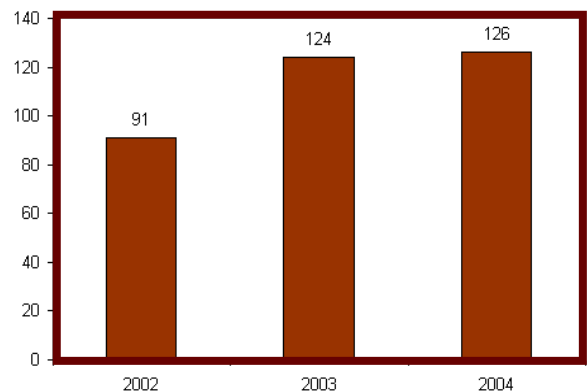
The Commission now has the authority to reprimand or order

open hearings and, upon finding by clear and convincing evidence that the charges are established, recommend to the Supreme Court that a judge be reprimanded, disciplined, censured, suspended without pay for a period not exceeding six months, removed or retired.

Under the amended law, in addition to the prior grounds for discipline, a judge may be disciplined for “conduct prejudicial to the administration of justice that brings the judicial office into disrepute”.

Number of Complaints

The JQC receives and investigates approximately 100 complaints each year. Of that total, approximately 98% are dismissed at the conclusion of the preliminary investigation, either because the basis of the complaint is an appealable issue beyond the JQC's jurisdiction, or because the preliminary investigation fails to produce sufficient facts to warrant additional proceedings.



JQC Membership

Chief Justice John V. Hendry,
Supreme Court, Chairperson and
Permanent Member



Hon. Alan L. Brodbeck, O'Neill,
County Court Judge

Hon. Jeffrey Cheuvront, Lincoln,
District Court Judge

Charles Diers, Fremont, Citizen
Member

Mary Gerdes, North Platte, Citizen
Member

Fred Kaufman, Lincoln, Attorney

D. Steven Leininger, Grand Island,
Attorney

Leigh Ann Retelsdorf, Omaha,
Attorney

Hon. Wadie Thomas, Omaha,
Separate Juvenile Court Judge

Sherry Wright, Omaha, Lay
Member

*The State Court Administrator
serves as Secretary to the
Commission*

Complaint Process Generally Followed by Commission

The specific process is outlined in the Nebraska Statutes

The Judicial Qualifications Commission meets at least six times each year. The Commission reviews complaints against judges submitted to it by individuals and also may initiate an inquiry into acts of a judge on its own motion. The Commission reviews and screens each complaint to determine whether any further inquiry is required or whether it should be dismissed.

If the Commission finds there is insufficient cause to proceed further, the matter is dismissed and the complainant is notified of the dismissal. If the judge was notified of the existence of the complaint or if it was made public (by actions of the complainant or others), the judge also is notified of the dismissal.

Informal Inquiry

If the Commission determines that further information is needed before action is taken, it may undertake an informal inquiry or investigation. Typically, this consists of the Commission's investigator interviewing possible witnesses, reviewing transcripts and other court documents as the case requires, and submitting a report to the Commission. The Commission then either dismisses the complaint as unfounded or determines that a preliminary investigation be conducted.

During the initial inquiry, the judge is not notified of the complaint. All information is and remains confidential.

Preliminary Investigation

Although the preliminary investigation may be conducted by the Commission as a whole or a committee of commission members, in most cases, the investigation is conducted by the Commission's investigator. Once the Commission determines that a preliminary investigation is warranted, the judge is notified of the complaint and is provided the following information:

1. The nature of the complaint and the substance of the allegations which may violate the Code of Judicial Conduct;
2. The identity of the complainant or that the investigation is on behalf of the

Commission on its own motion;

3. A copy of the Commission rules;
4. A reasonable opportunity to present relevant information to the Commission;

Upon completion of the preliminary investigation, the investigator submits a report to the Commission including any information submitted by the judge. The Commission then reviews the report and determines whether there is sufficient cause to proceed further. If not, the complaint is dismissed and the judge and the complainant are notified of the dismissal. If the Commission finds that there is probable cause to warrant discipline, the Commission may:

1. File a formal confidential complaint with the Clerk of the Supreme Court, and conduct a formal closed hearing. Upon conclusion of that hearing, the Commission may dismiss the matter or issue a public reprimand. All proceedings, evidence and reports, including any dismissal, remain confidential. However, if the Commission determines a reprimand is warranted, the reprimand is made public. (There is no private discipline in Nebraska.)

Note: If the matter is dismissed at any time prior to a filing of formal public charges, but the complaint has become publicly known, the judge may waive confidentiality.

2. File a formal complaint and order a formal open hearing.

Formal Open Hearing

If the Commission decides upon a formal open hearing, a complaint is then filed with the Clerk of the Nebraska Supreme Court as a public record. The complaint is served upon the judge who has 15 days within which to file an answer. The answer must "contain a full and fair disclosure of all facts and circumstances" pertinent to the complaint. (Rule 6). Failure to do so may be additional grounds for disciplinary action.

Generally the Commission directs that the hearing be held before a Special Master to be appointed by the Supreme Court. The Special Master holds a public hearing following rules of procedure and evidence applicable to Nebraska District Courts. Counsel for the Commission presents evidence in support of the complaint. The judge, who may be represented by counsel, presents any relevant evidence.

The hearing is recorded by a court reporter.


Within 30 days after the conclusion of the hearing, the Special Master reports to the Commission findings of fact and conclusions of law. The report of the Master is not made public until the decision of the Commission is issued.

The parties are provided the Special Master's report and have 15 days to file with the Commission any objections and any supporting written argument. The Commission may hear oral arguments on the objections and may receive additional evidence.

Upon de novo review of the Special Master's report, the transcript of the hearing, the objections and arguments of the parties, and any additional evidence received, the Commission determines whether there is clear and convincing evidence of a violation of the Code of Judicial Conduct, and decides on a recommendation of discipline. The decision of the Commission must be supported by an affirmative vote of a majority (six or more members) of the Commission. The Commission's decision is issued with written findings of fact and conclusions of law together with a recommendation to the Nebraska Supreme Court. This report and any recommendation of discipline is public. The Commission may dismiss the complaint, or recommend to the Supreme Court:

1. Public reprimand
2. Other discipline (not defined by statute)
3. Suspension (no more than 6 months)
4. Removal from office
5. Involuntary retirement (usually for disability)

Action by Supreme Court

Either party may ask the Supreme Court to reject or modify the decision of the Commission. The Supreme Court, absent the Chief Justice, reviews the record de novo. The parties may be given an opportunity to further brief and argue the matter, and additional evidence may be received at the Court's discretion. The Nebraska Supreme Court's decision is public, and is final. 

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**Nebraska Judicial Qualifications
Commission**

Judicial Branch Web Site:
www.nebraskacourt.com

In Memoriam:

On a personal note, the members of the Qualifications Commission lost a friend and colleague when County Judge C.G. Wallace died suddenly in August, 2004. Judge Wallace is greatly missed by his fellow JQC members, by his colleagues on the bench, and by the many, many court staff who considered him a friend.



Confidentiality of Records

All papers filed with and proceedings before the commission or masters appointed by the Supreme Court prior to a reprimand or formal hearing are confidential. However, under certain limited circumstances, the confidentiality of papers and proceedings may be waived in writing by the judge.

Additional Responsibilities of the Commission on Judicial Qualifications

Judicial Retirement for Disability

Judges who become disabled may file an application with the commission for disability retirement. If, after study of information submitted, the commission determines that a judge is permanently disabled, the commission will notify the Public Employees Retirement Board that the judge's application is granted.

Workplace Harassment

The Judicial Qualifications Commission has an expedited procedure for a claim of workplace harassment under the Supreme Court's policy. Allegations are to be expedited and advanced for consideration and disposition as quickly as possible.

Judicial Qualifications Commission Web Page

The Judicial Branch web site contains a "Professional Ethics" section with links to ethical information for both judges and for lawyers. The judges section has a downloadable complaint form with instructions, The Supreme Court's rules for operation of the JQC, the full Nebraska Code of Judicial Conduct, and Judicial Ethics Advisory Opinions. From the main page, users can click on the "Professional Ethics" link on the left menu selection. Go to: www.nebraskacourt.com

Lawyer's Counsel for Discipline

Complaints regarding attorneys are directed to:

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